

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 23, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB333, HB348, 1/19/2001
Executive Action: HB308, HB307, HB139, HB302

HEARING ON HB333

Sponsor: REP. LARRY JENT, HD29, Bozeman

Proponents: Al Smith, Montanan Trial Lawyers
Bob Olson, Montana Hospital Association
Patti Keebler, Montana AFL-CIO
Jerry Loendorf, Montana Medical Association
Brian Wohlerg, Asarco employee
Rick Piper, attorney for Mr. Wohlerg

Opponents: George Wood, Montana Self-Insurers Association
Nancy Butler, State Fund
Oliver Goe, Montana Municipal Insurance Authority
Montana School Groups Authority
Jacquelyn Lenmark, American Insurance Association
John Metropoulos, Farmers Insurance Group
Ray Barnicoat, Montana Association of Counties

Opening Statement by Sponsor:

REP. LARRY JENT, HD29, Bozeman, stated the bill would require that an insurer pay costs and attorney fees for denial or termination of medical benefits that are later determined compensable by the workers' compensation court. He said the bill adds the words "or medical benefits" to the existing statute. He said often the attorney fee comes out of the bill payment and therefore approximately 25% of the bill is still owed. Also, he said, since there is no provision for attorney fees, often cases in the \$3-4,000 range are not taken by attorneys because they are not considered worth it. At this time he said there is no incentive for attorneys to represent disadvantaged workers and many go unrepresented. He stated bills for retrieving medical records are sent to attorneys by doctors and there needs to a provision for recovering these expenses even in *pro bono* cases.

Proponents' Testimony:

Mr. Smith testified that attorneys put a lien on medical benefits so when the injured party is paid a portion goes to the attorney. He said this is not fair to the provider of the medical services because they are already only receiving only a portion of what they are owed. He stated that when the insurers make the decision wrongly in the first place, these insurers should pay the attorney fees. He said the attorneys are only helping workers get what they are entitled to. He said this bill helps injured workers get the care which they are eligible for and which they

need. This bill also helps doctors and hospitals get paid, he said.

Mr. Olson said if benefits were due they should be paid to the hospitals. He testified when the hospital receives a benefit check now it says right on the check "discounted to pay attorney." He agreed that this bill was a basic issue of fairness and asked the committee to endorse this bill.

Ms. Keebler said as a representative of Montana's working families she would ask the committee to support this bill as a matter of fairness.

Mr. Loendorf said medical providers often receive discounted benefits and are not a party to the proceeding. Under current law, he said, an insurer can deny payment and no penalty is involved.

Mr. Wohlerg spoke to the committee of an injury he received while trying to rescue a fellow worker who had been electrocuted. He was seriously injured in the attempt and had to hire a lawyer, whom he could not afford, to fight for benefits which should have been his. He told the committee that since the incident he had lost his home, his wife and his children due to the financial stress of the situation. He said he is now faced with not only physical scars, but emotional scars. He further added an injured person should not have to sue to get their bills paid.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Mr. Piper told the committee lawyers have a duty to do *pro bono* cases and much of their work with workers compensation is *pro bono*. If not, time is billed as 20% of what is recovered. Another problem exists when workers go to other states and have to find medical care because many out-of-state providers won't deal with Montana Workers Compensation Fund. These workers have a hard time finding care, he said.

{Tape : 1; Side : B; Approx. Time Counter : 5.5}

Opponents' Testimony:

Mr. Wood said he represented employers and wanted to point out that employers pay the total cost of workers compensation including the administration of the program by the state. He said most disputed injuries are a result of disputes regarding the compensability of the injury and if it arose out of the employment situation. He said there are also disputes over whether certain care is needed. He said under this bill attorney fees might be paid merely because the bill was disputed and not because a judge had declared the denial unreasonable. Therefore he said the bill could increase costs because now the insurer pays only when there is an unreasonable finding. He said the

beneficiaries of this legislation are the attorneys and the payer is the employer. He urged the committee to not pass the bill.

Ms. Butler opposed the bill because it dropped the "unreasonable" requirement and that the date should be tied to the date of the injury. She also said the 30 day time period should be 75 days.

Mr. Goe gave the committee an example of an insurer who was denied coverage which was determined unreasonable. Then if later there was determined to be a reasonable denial, would there still be an obligation to pay attorney fees even if there was a settlement.

{Tape : 1; Side : B; Approx. Time Counter : 18}

Ms. Lenmark opposed the bill for the reasons previously stated. She said the committee had been told the bill addresses benefits wrongfully denied, however, she pointed out, there was no language in the bill to address this. She urged them to not pass the bill.

Mr. Metropoulos opposed the bill and said it contained language, in his opinion, which was a disincentive to settlement.

Mr. Barnicoat said, as risk manager for over 5000 employees in the Montana Association of Counties he wanted to go on record as opposing the bill.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 0}

REP. LAIBLE, REP. GALLIK and REP. PRICE asked **REP. JENT** some questions regarding denials of claims. **REP. JENT** answered that denied claims were resolved before a court, they often involved an Independent Medical Exam, and that in the real world, the insurer does not want to pay. Often, on a \$3-5,000 medical bill, the worker is left to pay it, and usually at a time when no money is coming in because the worker is unable to work or on disability.

Closing by Sponsor:

REP. JENT said the bill is a matter of reasonable versus unreasonable. He stated one "hired gun doctor" was all it takes to get a different opinion through an Independent Medical Exam. He told the committee the power insurance companies have over claimants is overwhelming.

Sponsor: REP. JIM SHOCKLEY, HD61, Victor

Proponents: Patrick Montalban, Liquor Store Owners Assn. Of MT
Mark Staples, Montana Tavern Assn.
Shane Farnsworth, Liquor Store Owners Assn. Of MT
Rep. Gay Ann Masolo, HD40
Margaret Gilman, Victor Liquor Store
Robin Hawkinson, Lolo Liquor Store
Bill Hanna, Laurel Liquor Store
Virginia Zwerneman, Choteau Liquor Store
Steve Streive, Boulder Liquor Store
Bonnie Berglind, Townsend Liquor Store
Jackie Thomas, Liquor Store #170
Mike Soule, Belgrade Liquor Store
Doug Kirby, Billings Liquor Store
Don Meyer, Helena Liquor Store
Beatrice Lunda, Shelby Liquor Store

Opponents: None

{Tape : 2; Side : A; Approx. Time Counter : 10.5}

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD61, Victor, said the state used to own 26 liquor stores and have 82 10% commissioned stores. He said in 1995 the state privatized its liquor store operation and in towns with less than 3000 population, the person running the store could buy it. In population areas of over 3000, the individual running the store could bid a 3-9% commission to operate state stores or commissioned stores. Then after 3 years they could renegotiate their contract. He said the sale of the stores was to have been a one-time source of revenue for the state's general fund plus they would be getting rid of full-time employees. The sale of the stores was thought to be revenue neutral. He said it has worked out well for the state but not for the people who bought the stores. There is no fiscal bill yet but it is estimated to have given the state something like 3.2 million. He said the people who bought the stores are not being adequately compensated. All of the stores have different commission rates depending on what they bid. Of the presently existing stores heatthe small stores. This bill would add 5.5% to the large stores rate and 8.5% to the small stores' rate. In 1995 there were 108 liquor stores and now there are 98. What this bill would do, would let these mom and pop operations get a fair return on their money. Also, in rural areas at this time spacing can't be any more than 35 miles between stores. This would increase to 60 miles between stores. This would limit the competition because there is not much population. In larger towns the distance is

limited to a mile. Now there can not be a second liquor store until there are 52,000 people, the bill changes this to 72,000 people, and for a third store from 92,000 to 132,000 people. The bill will cost money because the state will not take as much money in. His suggestion is to spread the increases over 5 years because of the tight state budget.

Proponents' Testimony:

Mr. Montalban presented written testimony. **EXHIBIT**(buh18a01)

{Tape : 2; Side : B; Approx. Time Counter : 0}

Mr. Staples said he represented the biggest clients of the liquor stores and 65-70% of their business. He said the liquor store owners were to get first preference in bidding and actually the bidding situation became a little nasty. The aftermath that was the state got a windfall which was an ongoing one. He said the liquor store owners were people who knew how to do their job well. He said he would like to see them get a fair commission from the revenue they are creating.

Mr. Farnsworth said he operated the largest liquor store in the state in Billings. He noted that 80% of his sales were case lots. He said he sold 2400-3000 cases per month. His profit was a couple of bucks per case and he said the handling cost more than that. He said HB348 would make this fairer.

REP. MASOLO said she had several small liquor stores in her district in Townsend, East Helena and White Sulphur Springs. She urged the committee to pass the bill because she said she did not want to drive down the streets of her towns and see any more vacant buildings.

Ms. Gilman said she had owned the Victor liquor store since 1987. She said she had hoped it would get better down the road, but it had not. She told the committee they sell their cases to bars at an 8% discount. She asked them to help the liquor store owners and pass the bill.

Mr. Hawkinson testified it was important to remember the fund was created by the stores and asked for a fair method to distribute it to each and every store. He said the stores would then be able to offer better benefits and wages to their employees.

Mr. Hanna stated when they were bidding on the stores, they were told there would be a program to compensate them for things that were beyond their control such as rent and electricity. He asked

the committee to help these small businesses which really deserved it.

Ms. Zverneman said she had a very small store and she did not wish to close because of lack of profitability.

Mr. Streive asked the committee to support the bill.

Ms. Berglind asked them to pass the bill and said all small towns need all the help they can get.

Ms. Thomas told the committee that her store, the second largest in Montana, actually owns her. She said she acquired the store in 1995 and had tripled sales since then. She said her store had contributed one million dollars to the fund and she asked the committee to give her something back.

{Tape : 2; Side : B; Approx. Time Counter : 22.5}

Mr. Soule, Mr. Kirby and Mr. Meyer all asked the committee to support the bill.

Ms. Lunda said she was present when the bill was heard in 1995. She said the backbone of the business was the tavern owners and she had no problem with the discount they received. She said she just never had believed the discounts would be coming out of her own pocket. She asked the committee to level the playing field and return the windfall to the people who deserved it.

Informational Witnesses:

Shana Bingham, Department of Revenue

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 0}

REP. BROWN asked **Mr. Montalban** if increasing the population to 60,000 would require consolidation of any stores. **Mr. Montalban** said it would not.

REP. LAIBLE asked if there was any discussion between the store owners and the tavern owners about lowering the discount case rate. **Mr. Montalban** replied the issue was not with the tavern owners as they were barely making it with 8% discount. He said often in the small towns, bar owners were not even able to buy whole cases.

REP. STEINBEISSER asked **Mr. Montalban** if the distance change would apply to Sidney which was only 50 miles from Glendive. **Mr. Montalban** said no it would only apply to new stores.

Closing by Sponsor:

REP. SHOCKLEY said the tavern owners do not make a lot of money off liquor. They make their money from gambling, he said. The purpose of this bill is to make the situation more equitable for the liquor store owners. He pointed out that liquor stores turned out to be more profitable for the state because they were being run by private individuals. However, these individuals were not benefitting because of the current commission structure. He also said he would provide an amendment to spread the payment out over five years.

EXECUTIVE ACTION ON HB308

Motion: **REP. MATTHEWS** moved that **HB308 DO PASS AS AMENDED.**

Discussion:

REP. MATTHEWS offered an amendment on floater liquor licenses, that the time of transfer be changed to 3 years which he called reasonable. **REP. MATTHEWS** said the license value is driven down when the market is flooded with floater licenses.

REP. LAWSON said he supported **REP. MATTHEWS** amendment.

REP. MUSGROVE asked **Mr. Staples** if he agreed with the 3 year amendment. **Mr. Staples** said he did and had participated in this compromise.

REP. GALLIK said he had been a former bar owner although not in this state, and he was supporting this bill as he thought the existing law was an impediment to free market enterprise.

Vote: Motion **carried 17-2 with Himmelberger and Lawson voting no.**

EXECUTIVE ACTION ON HB307

Motion/Vote: **REP. BROWN** moved that **HB307 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB302

Motion/Vote: **REP. MATTHEWS** moved that **HB302 BE TABLED.** Motion carried unanimously.

{Tape : 3; Side : B; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB139

Motion: REP. GALLIK moved that HB139 DO PASS AS AMENDED.

Discussion:

REP. GALLIK moved his amendment to HB139 saying it inserts language reflecting some of the testimony and makes some editing changes.

REP. BITNEY said since there was no sub-committee called on the combining of HB139 & HB302 the executive action should be delayed on the bill as amended so that the public can review it.

REP. LAIBLE said he would like to vote on the amendment but not the bill.

REP. GALLIK MOVED TO POSTPONE ACTION ON HB139 AS AMENDED.

Motion carried unanimously.

Motion/Vote: REP. GALLIK moved that HB139 BE AMENDED. Motion carried 17-1 with Bitney voting no.

ADJOURNMENT

Adjournment: 11:13 A.M.

REP. JOE MCKINLEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

EXHIBIT (buh18aad)